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exceptions to the usual destiny of the sex, and these exceptions, when analysed, serving to confirm the general rule. They were not thrown into the vulgar strife and competition of honor, which necessarily pervade the ranks of ordinary life. They did not have to run the career of arms as the road to power. And the condition of a great prince in the countries of Christendom is rather that of one representing sovereignty, than of one actually exercising it ; since all the labor and responsibility and personal danger devolve on ministers and generals holding the delegated powers of government. Aurelius, it is said, contemplated the establishment of a female senate. Helioabalus actually did organize one under the presidency of his mother ; but Ælius Lanfirdius who tells the tale, says the members chiefly occupied themselves with points of etiquette, of regulation of dress, and other like *feminine mysteries of state*. And whether the story of the Amazons be authentic history, or only a cunningly devised fable, it presents at all events a poor picture of what society would become, if our councils were filled and our armies *manned* with women, and they rather than men, or equally with men, discharged the external and political duties of society ; doing so at the sacrifice of all that delicacy and maternal tenderness, which are among the most appropriate and the highest charms of Woman. Hers be the domain of the moral affections, the empire of the heart, the co-equal sovereignty of intellect, taste, and social refinement ; leave the rude commerce of camps and the soul-hardening struggles of political power to the harsher spirit of man, that he may still look up to her as a purer and brighter being, an emanation of some better world, irradiating like a rainbow of hope, the stormy elements of life.

ART. IX. — *The Legal Profession in England.*

The Sixth Report of the Common Law Commissioners on the Inns of Court. London. 1834.

THE learned professions have heretofore been very justly held in high estimation in almost every civilized country. They have been regarded as the main pillars of every good government. The services and influence of the members of

these professions have been deemed of so much consequence in every community, that certain privileges and immunities have often been granted to them in return for certain qualifications required of them ; and they have been empaled and protected by the laws to prevent the incalculable mischiefs, which it has been apprehended would inevitably result from a free access and admission of ignorant, base, dishonest, or unworthy men to their ranks. A certain course of education, study, discipline, and probation in science and morals has, from the time of the Roman emperors to the present day, been generally supposed to be essentially necessary for the exercise of these professions, in a manner consistent with the safety and welfare of the public. And we cannot believe that there are many, if there be any, well informed and well intentioned persons, who will dispute the policy of all such restrictive laws and regulations.

There are some, we suppose, who fancy that the state of society, in modern times, has undergone such an entire change, that it is impossible to test the wisdom or utility of any institutions, establishments, laws or regulations, by conclusions drawn from the experience of by-gone ages. Looking with suspicion and distrust upon every thing which has the stamp of antiquity upon it, and guided only by the light of speculative philosophy, we should not much wonder if some of them should even doubt the utility or expediency of the laws and regulations generally adopted in respect to the learned professions, or condemn them as being founded upon too narrow and unfavorable views of human nature, or as obnoxious or unsuitable to the free and equalizing spirit of this enlightened age. We should not think it very inconsistent with their theories, if we should hear such sentiments advanced by some of those whose minds are bewildered with the dreams of human perfectibility, or giddied with extacy in contemplation of the fancied advantages of a universal diffusion of knowledge. Enraptured with the notion that new and extraordinary light has suddenly and marvellously burst in upon this hitherto benighted world ; that the " march of intellect " immeasurably surpasses that of all former times,—and that the common sense of the present day soars far above all the erudition of those who have preceded us ; some of these speculative philosophers and philanthropists may, for ought we know, be inclined to think that great professional learning, if not objectionable, is of little or no utility, and that, at any rate, public opinion will very well supply the place of tests and probatory and precautionary laws and regulations.

But there is another much more dangerous class of persons, not so remarkable for their philosophy or philanthropy as for their ambition and selfishness, who, to accomplish their base purposes are constantly flattering the people by pretending, that although wisdom formerly dispensed her favors sparingly among a few choice spirits, she now pours forth her treasures bountifully, gratuitously, and indiscriminately to all orders of men ; that the mere glance of intuition of the unlearned at the present day penetrates much farther than the plodding lucubrations of the closet before could possibly reach ; that, in fact, knowledge, judgment and skill, which were formerly matured only by a long course of study and practice, now shoot up spontaneously, and arrive at the highest perfection without cultivation ; and that the tradesman and the artificer may now grasp at one clutch the utmost extremities of useful science, sound all the depths and mysteries of jurisprudence, physic, and theology, important to be known, and comprehend and discharge with sufficient ability the high and important functions of legislation and government by the force of their native genius, aided only occasionally by such information as they can pick up in the intervals of their daily business, "between the blows of the hammer and the strokes of the saw."

These are popular doctrines, which will of course receive the support of every pettyfogger, quack and sciolist in the community, and which under a popular government like ours, it requires but very little effort to enforce. It is not a matter of surprise, therefore, that the jealous and inquisitorial spirit of the times, awakened by the harangues of these sycophants of the people, should look with a malicious eye upon the pretensions of the learned professions, and doubt, or even more than doubt, the policy or expediency of affording to them any countenance or encouragement. The privileges and immunities which have heretofore been wisely granted to them, may be easily mistaken for odious monopolies ; and the restrictions against free admission may as easily be mistaken for encroachments on the rights and liberties of the people.

Having sat down under these circumstances to give our readers some account of the state of the profession of the law in that country from which we have derived the greater part of our jurisprudence, we have more than once stayed our hand in apprehension of the unfavorable reception with which such an article

might probably meet. But as professional qualifications have very recently been the subject of discussion in the legislature of Massachusetts and elsewhere, and as erroneous opinions seem to prevail among the people, particularly in regard to the qualifications necessary for the profession of the law, strengthened perhaps by an imperfect view of the proceedings of the English Parliament in relation to the same subject, we have concluded on the whole, that it is not an unfit time to lay such account before our readers, accompanied with such remarks, as may incidentally occur, relative to the state of the profession elsewhere.

The Report of the Common Law Commissioners, referred to at the head of this article, was made in consequence of certain proceedings upon the motion of one Daniel Whittle Harvey, in the House of Commons, about four years ago, that an address might be presented to his Majesty, praying him to direct the Common Law Commissioners to examine into the course of proceeding before the benchers and visitors of Lincoln's Inn, the Inner Temple, the Middle Temple, and Gray's Inn, upon application of persons seeking to become students thereof, or to be called to the bar, and to report thereon. Mr. Harvey had previously made an unsuccessful motion for leave to bring in a "bill to give power to the Court of King's Bench, in certain cases, to compel the benchers of the four Inns of Court to admit parties as students and also as barristers at law." He had formerly been a solicitor, and had made several attempts without success, to gain admission to practise as a barrister at law. Very serious objections, affecting his private character, were made against his admission to the degree of barrister. The charges made against him, appear to have been confirmed by the court and jury, in several cases, and he was rejected by the unanimous decision of all the benchers; and their decision upon appeal to the twelve judges as visitors was, after hearing Mr. Harvey, and upon his own statement of his case, confirmed. Exasperation against the profession, and a determination, with his influence and that of his friends in the House, which was not inconsiderable, to obtain a rehearing of his case, or at any rate, to bring his case before the House, was, therefore, undoubtedly the cause of these motions. But the report of the Common Law Commissioners was not at all satisfactory to Mr. Harvey and his friends. And, therefore, about two years ago, the subject was again agitated in the House, on the motion

of Mr. O'Connell, for the appointment of a select committee, to examine and report in like manner as the Common Law Commissioners had been directed to do. Finding, after some discussion, that the House were not disposed to make any further examination into the proceedings and practice of the Inns of Court in general, Mr. O'Connell consented to an amendment of his motion, so that it might relate only to the appointment of a select committee, to examine into Mr. Harvey's own particular case. And the motion so amended prevailed. We are not aware that any further or other proceedings having been recently had in the English Parliament respecting the Inns of Court, or the profession.

The members of the profession of the law in England, as in most European countries, are formed into different and distinct classes, each of which performs a distinct part of the labors of the profession. And for each of these classes a different course of study and education is requisite. In the Courts of Common Law all the subordinate labors of the profession are performed by persons who are denominated attorneys. The attorney acts as a sort of agent of the party, in conducting his law business, and holds all the correspondence with him. He is a middle man between the barrister and the client. He obtains advice for him in cases of doubt, or difficulty, draws contracts and instruments for him in ordinary cases, and causes instruments of conveyance and other instruments, to be drawn for him by conveyancers in difficult cases, and attends the execution of them. He makes his client's demands upon debtors; commences his suits when plaintiff, and enters an appearance for him when defendant; watches the progress of his suits or cases, attends the prosecution or defence of them to final judgment; obtains advice respecting the proceedings when necessary, in every stage of their progress; gives the requisite notices; procures the pleadings to be drawn and motions to be made; collects, arranges and prepares the evidence for the trial; and employs barristers to argue the case to the jury, and when necessary, to the court. His office is highly respectable and often lucrative, but in rank and dignity far below that of the barrister. Labors of a similar kind in the courts of equity are performed by persons denominated solicitors. Formerly, the offices of attorney and solicitor were entirely distinct, but in later times they have been usually discharged by the same person, who is admitted to practice both as at-

torney and solicitor. The attorney and solicitor in the Courts of Common Law and Equity, answer to the proctor in the Ecclesiastical Courts and Courts of Admiralty, by whom similar labors are performed in those courts.

When it becomes necessary to address the court, to make a motion, or argue upon a question of law or fact in the cause, to the court or jury, if it be in the Courts of Common Law, a barrister or sergeant at law must necessarily be employed for that purpose, and if it be in the Ecclesiastical Courts or Courts of Admiralty, an advocate at Doctors Commons must be employed, who alone are allowed to perform such offices in these courts. The practice of certain of the barristers is generally limited to the courts of common law. Others practise wholly or principally in the Courts of Equity. Of those who generally practise in the common-law courts, some usually attend the Courts of Common Pleas and Exchequer, others more commonly appear in the Court of King's Bench, and many, perhaps rather from necessity than from choice, are most frequently seen in attendance at the Criminal Courts at the Old Bailey and the Courts of Quarter Sessions. Of those who practise chiefly in the Courts of Equity, some attend usually before the Lord Chancellor, others before the Vice Chancellor, others before the Master of the Rolls, and many before the Court of Bankruptcy and the Insolvent Debtor's Court. Barristers who practise in the Courts of Common Law, as well as those who practise in the Courts of Equity, and the advocates at Doctors Commons, argue cases on appeals before the House of Lords. Many barristers too, are in the practice of appearing before committees of the House of Commons, and occasionally in some of the city and county Courts, and before the judges at their chambers as well as before the Sheriff's Jury. And a limited number of the younger barristers commence their professional career in the Court of Marshalsea and Palace Court. But in matters before the Judges at Chambers in ordinary cases, and in the Sheriff's Court, and before the Commissioners of Bankruptcy, and the Court of Requests and in some other of the subordinate courts, the attorneys are allowed to and usually do perform the duties, which are alone performed by barristers in the higher courts. Barristers practising in the Courts of Common Law and advocates at Doctors Commons, are occasionally employed before the Chancellor, in arguing questions relating to the particular branches of law, with which they are,

from their course of practice, respectively most familiar. Some barristers rarely if ever appear in court, being employed chiefly as special pleaders, or equity draftsmen, in preparing the written pleadings of the litigant parties, or as conveyancers, or chamber counsel.

The right of practising pleading and audiences in the Court of Common Pleas was formerly exercised exclusively by persons holding the highest rank in the profession, and of the degree of the coif or sergeants at law ; but by a recent royal warrant barristers have now an equal right and privilege to practise in that court ; and the precedence is conferred on the sergeants of law already created. Future sergeants, if any should be created, will take rank next after the king's counsel, or those who have patents of precedence. King's counsel have precedence, according to the dates of their appointment. They answer in one respect to the *advocati fisci* of the Romans, as they cannot, without a licence, be employed against the crown. And barristers having patents of precedence, rank according to the dates of those patents, and those having no patents of precedence, have precedence after the king's counsel, sergeants at law, the queen's attorney, and solicitor general, and the Recorder of London, according to the dates of their call to the bar. Barristers, advocates and sergeants never, on any occasion, have any interviews whatever with their clients. They confer only with the attorney, solicitor, or proctor. No action can be maintained by them for their fees, which are regarded as *quiddam honorarium*. They are employed not for the cause, but for the occasion only ; and have no concern with the cause, or the fate of it, beyond the particular occasion for which their services have been engaged. It often happens that the opinion of one or more barristers is obtained respecting the legality of the demand or defence, that another is employed to make the declaration, or draw the answer or plea, that a third is employed to make a motion, that a fourth is employed to argue the case to the jury, and a fifth to argue some question of law or equity to the court. The brief containing an abstract of so much of the case as is important for the occasion, with the fees, is delivered by the attorney at the time of the retainer. England, for the purpose of trials at *nisi prius* is divided into several circuits ; two judges attend on each circuit. A certain number of barristers also attend the courts on the different circuits to argue causes at the *nisi prius* sittings

before the court and jury. And it is a rule well understood and observed, that no barrister can go on more than one circuit unless upon a special retainer. When commencing practice he may go on a particular circuit once or twice to try his luck, and then change that circuit for another. But after this trial, he is not permitted to change his circuit during his practice. After being appointed the king's attorney or solicitor general, he is obliged to give up his practice on the circuit entirely, excepting in cases where he shall have a special retainer. On the circuit the barristers dine together, and none but those who are of the degree of barrister are admitted to the table. The judges, we believe, lodge at a house provided for them exclusively by the county. Judges in all cases in the common law courts, are selected from the sergeants at law, and cannot return to practice at the bar, after having taken a seat upon the bench. The judges, sergeants, barristers and advocates, when in court, wear, by way of distinction, a particular dress. The sergeants, barristers and advocates wear wigs, bands and gowns; and none are allowed to appear in court without these badges of distinction. His majesty's attorney and solicitor general, the sergeants, and king's counsel, and all above the rank of an ordinary barrister, have silk gowns. The sergeants have nothing in their dress to distinguish them from the king's counsel, excepting a black patch of silk on the top of the wig. The judges wear full bottomed wigs and robes of different colors on different days, in term time, and wigs much like those of the sergeants at the sittings at *nisi prius*. Full bottomed wigs are also worn by the barristers, when they appear before the House of Lords. The attorneys, solicitors and proctors, have nothing in their dress to distinguish them from other gentlemen.

In regard to the education requisite to entitle them to practise, that of the attorney and solicitor differs widely from that of the barrister, as that of the proctor does also from that of the advocate. The attorney and solicitor are required to serve a clerkship *bona fide*, under articles of agreement. This service must be during five years, if the candidate have not obtained the honor of Bachelor of Arts or Bachelor of Laws, in the Universities of Oxford, Cambridge or Dublin, but otherwise, three years service will be sufficient, if it be within four years of receiving his degree. The whole of this time must be spent in the office of a practising attorney, excepting the

last year, which may be spent with a practising barrister, special pleader or conveyancer. The candidate is obliged to give one terms notice of his intended application for admission, and to make affidavit of his service during the time required. Before being sworn and admitted, he is liable to be examined as to his eligibility and capacity by the judge, to whom he makes application, but this is usually dispensed with unless there be opposition. He takes an oath that he will truly and honestly demean himself as an attorney, according to the best of his knowledge and ability ; and his name is then enrolled among the attorneys. An attorney who has been sworn, admitted, and enrolled in any of the courts at law at Westminster, may be admitted as a solicitor in any of the Courts of Equity. And on the other hand a solicitor may be admitted as an attorney in the courts of Common Law. Attorneys who act as agents of unqualified persons, or permit such persons to use their names, or are guilty of any gross misconduct, are liable to be struck off from the rolls and debarred from practising. And any unqualified person, who shall act as an attorney is liable to imprisonment not exceeding one year.

As to the education and qualifications requisite in order to be called to the degree of barrister, we cannot state them more concisely than by adopting the language of the common law Commissioners. "The four Inns of Courts, — the Inner Temple, the Middle Temple, Lincoln's Inn, and Gray's Inn, — severally enjoy the privilege of conferring the rank of barrister at law ; a rank which constitutes an indispensable qualification for practice in the superior courts. No other means of obtaining that rank exist, but that of becoming enrolled as a student, in one or other of these Inns, and afterward applying to its principal officers or benchers, for a call to the Bar. The origin of this privilege of the Inns of Court appears to be involved in considerable obscurity.

It was observed by Lord Mansfield, in the case of *The King v. Gray's Inn*, Doug. 354, that the original institution of the Inns of Court no where precisely appears ; but it is certain that they are not corporations, and have no charter from the crown. They are voluntary societies, which for ages have submitted to government, analogous to that of other seminaries of learning ; but all the power they have concerning the admission to the Bar, is delegated to them from the judges ; and in

every instance their conduct is subject to the control of the judges as visitors.

In support of these positions, various passages are cited from Dugdale's *Origines Juridicales*, which clearly shew that, in former times, the judges and the benchers made regulations to be observed by the Inns of Courts, not only respecting the admission to the Bar, but generally regarding the conduct of the members of the Inn, and the admission of students.

Many instances will be found in the appendix, of such orders, sometimes made by advice of the privy council and judges only, and sometimes by the benchers, by advice and direction of the judges, and proceeding from the king's suggestion.

There does not appear to be an instance in modern times in which the judges have interfered with the internal regulations of the different societies, though there are several in which they have acted as visitors, upon appeals to them from decisions of the benchers respecting calls to the Bar.

In the late case of *Mr. Wooler*, reported as the case of *The King v. The Benchers of Lincoln's Inn*, 4 B. & C. 855, it was held that the judges had no power, as visitors, to interfere with the regulations of the Inns of Courts respecting the admission of students ; and also that the Court of King's Bench could not, in such case, interfere by mandamus. It was observed by Mr. Justice Littledale, "that the court was called upon to control the society in the admission of their members ; but that, as far as the admission of members is concerned, those are voluntary societies, not submitting to any government. They may in their discretion admit or not, as they please ; and the Court of King's Bench has no power to compel them to admit any individual." He added, that "the interference of the judges at the instance of those members of the societies whom the benchers had refused to call to the Bar, was perfectly right ; because a member, who had been suffered to incur expense, with a view to being called to the Bar, thereby acquires an inchoate right to be called ; and if the benchers refuse to call him, they ought to assign a reason for so doing ; and if there be no reason, or an insufficient one, then the member who has acquired such inchoate right is entitled to have that right perfected.

With respect to the regulations and practice now in force in the different Inns of Courts, relative to the subjects referred to us under the present inquiry, we find them to be as follows.

1st. As to the admission of students.

The following rules appear to have been adopted by all the four societies.

Before any person can be admitted a member, he must furnish a statement in writing, describing his age, residence, and condition in life, and comprising a certificate of his respectability and fitness to be admitted, which must be signed by the party, and a benchers of the society, or two barristers.

No person is admitted without the approbation of a benchers, or of the benchers in council assembled.

The applications must, before he can enter into Commons, (and in some societies on admission,) sign a bond with surety conditioned to pay the dues. Every person applying to be admitted a member of any of the Inns must sign a declaration that he is desirous of being admitted for the purpose of being called to the Bar, and it is required by all the societies that he shall not, without the special permission of the society, take out any certificate as a special pleader, conveyancer, &c. under 44 G. III. 98, and such permission is not granted until the applicant has kept such commons as are necessary to qualify him to be called to the Bar, and it is given for one year only at a time.

Besides these regulations, we are informed, that at the Inner Temple, and at Gray's Inn, no person is admissible while engaged in trade. It has also been a rule at the Inner Temple, since the year 1829, that no person shall be admitted without a previous examination, by a barrister appointed by the bench for that purpose, in classical attainments and the general subjects of a liberal education. Such examination is to include the Greek and Latin languages, or one of them, and such subjects of history and general literature as the examiners may think suited to the age of the applicant.

2d. As to the call to the Bar.

The following regulations appear to be in force in all the societies. No person in priest's or deacon's orders can be called to the Bar. No person can be called to the Bar while he is on the roll of attorneys, solicitors, or proctors. Before a person can be called to the Bar, he must keep commons for three years, that is, twelve terms, by dining in the hall at least three times in each term. He must have been a member of the Inn for five years, unless he has taken the degree of Master of Arts, or Bachelor of Law at the Universities of Oxford,

Cambridge, or Dublin, or at Lincoln's Inn, is a member of the Faculty of Advocates in Scotland, in which case he may be called after he has been a member of the Inn for three years; but this exception does not extend to honorary degrees.

A student, previously to his keeping any of the terms requisite for his call, must deposit with the treasurer of the society one hundred pounds, to be returned without interest, on his being called to the Bar; or in case of death, to his personal representatives; but this rule does not apply to any person who shall produce a certificate of his having kept two years terms in any of the Universities of Oxford, Cambridge, or Dublin, or at Lincoln's Inn, of his being a member of the Faculty of Advocates in Scotland. No person can be called to the Bar until he is twenty-one years of age. The call to the Bar is by an act of the benchers in council or parliament, &c. assembled. The name and description of every candidate for being called to the Bar, must be hung up in the hall a fortnight before he is to be called; any person applying to be called to the Bar must make application to a master of the bench to move for the same. And the list of applicants to be called to the Bar at any society, is always transmitted, before the call takes place, to the other societies.

At the Inner Temple, Middle Temple and Lincoln's Inn, no attorney, solicitor, or proctor, can be admitted to commons for the purpose of being called to the Bar, until his name shall have been struck off the roll.

In Lincoln's Inn, a person wishing to be called to the Bar must read his exercise at the Bar table, and the barristers at that table have a power of rejection, subject to an appeal to the benchers. If not rejected by the Bar table, it is still necessary that he should be approved by the bench.

At Lincoln's Inn, it is a rule that no person in trade is permitted to do exercises, to enable him to be called to the Bar; and there is the same prohibition as to any person who has been in the situation of clerk to a barrister, conveyancer, special pleader, or chancery draftsman, and has done the offices and received the perquisites of such clerk.

3d. As to the case of rejection upon an application to be admitted student, or to be called to the Bar.

The general state of practice in all the societies appears to be as follows:

If a person be refused admission as a student by any of the

societies, he has no means, either by appeal to the judges or otherwise, of bringing under revision the propriety of the rejection ; [so decided in the case of *The King v. Lincoln's Inn*, before referred to, which is in accordance with the state of the practice] ; and a certificate of the rejection is transmitted to all the other societies.

When any of the societies refuse to call a person to the Bar, the benchers will hear him personally or by counsel, and allow him to give evidence to rebut the charges made against him ; and if he be dissatisfied with their decision, he may appeal to the judges. On such appeal, the benchers send to the judges a certificate stating the reasons of their refusal to call such person to the Bar."

The education of those who intend to practice in the ecclesiastical courts and courts of admiralty, is quite different from that requisite for the attorney, solicitor or barrister.

In order to entitle a person to be admitted as a proctor, it is required that he shall have served a clerkship of seven years under articles with one of the senior proctors, who must be at least of five years standing. And before he is permitted to be articulated, he must produce a certificate of his having made reasonable progress in classical education. When the term of seven years is completed the party is admitted a notary by a faculty from the archbishop of Canterbury. A petition is then presented to his Grace signed by three advocates and three proctors, that the party applying to be admitted has served as articulated clerk to a proctor of the court for the full term of seven years. If this certificate be approved, the archbishop issues his *Fiat* ; and a commission is directed to the Dean of the Arches, by whom the party is admitted under the title of a supernumerary with ceremonies similar to those observed on the admission of an advocate.

No person can be admitted to practice as an advocate in the courts of admiralty or ecclesiastical courts, who has not taken the degree of doctor of laws at one of the English universities. This we believe requires at least three years study of the civil and canon law. A candidate for admission as an advocate is required to deliver into the office of the Vicar General of the Province of Canterbury a certificate of his having taken the degree of doctor of laws, signed by the registrar of the university to which he belongs. A petition, praying that, in consideration of such qualifications the candi-

date may be admitted, is presented to the Archbishop, who issues his *Fiat* for the admission of the applicant directed to the Vicar General, who thereupon issues a rescript or commission to be prepared, and addressed to the Dean of the Arches, empowering and requiring him to admit the candidate as an advocate of that court. To this a proviso is always added that the person to be admitted shall not practice for one whole year from the date of this commission, in order that by attending during that interval he may acquire a competent knowledge of the forms of proceeding in these courts. The candidate is introduced by two advocates, and presented to the Dean of the Arches, who, after the archbishop's rescript is read and the candidate has taken the oaths, admits him as an advocate of the court. The advocate is afterwards admitted in a similar manner in the Court of Admiralty.

Having spoken of the Inns of Court and of Doctors Commons, it may perhaps, as a matter of curiosity, be interesting to our readers to give a succinct account of them. The buildings called Doctors' Commons are near to St. Paul's Cathedral in the city of London. The ecclesiastical laws, as now existing, have been for upwards of three centuries administered in the principal courts, by the body of men before referred to, as a distinct profession for the practice of the civil and canon laws ; some of the members of which body, in the year 1567, purchased the site on which Doctors Commons now stands, for the residence of the judges and advocates, and proper buildings for holding the ecclesiastical and admiralty courts, where they have ever since continued to be held. In the year 1768, a royal charter was obtained, by virtue of which the then members of the society and their successors were incorporated under the name and title of "The College of Doctors of Law exercent in the Ecclesiastical and Admiralty Courts." This college consists of a president (the Dean of the Arches for the time being) and those doctors of law, who, having regularly taken that degree in either of the Universities of Oxford or Cambridge, and having been admitted advocates in pursuance of the rescript of the Archbishop of Canterbury, shall have been elected fellows of the colleges in the manner prescribed by the charter. The judges, advocates and proctors have their offices of business and places of residence at Doctors Commons.

As to the Inns of Court they are of so very great antiquity

that their origin is now involved in some doubt. It has been generally supposed that they originated in a struggle between the church, governed by and cultivating the study of the civil and canon law, and the nobility, gentry, and others, anxious to maintain and cultivate the profession of the English common law. When the Court of Common Pleas, the only court at that time having jurisdiction in civil cases, was, by *Magna Charta*, established permanently at Westminster, it is supposed, that many lawyers theretofore dispersed in various parts of the country, began to have fixed residences near this court; and that about this time the professors of the common law being excluded from the universities, for the purpose of establishing the study of the common law without the aid of the church, formed themselves into voluntary societies and a collegiate order, and established a sort of university of their own, which at different times was favored with the countenance and support of the crown.

There are at present, four Inns of Court, the names of which have before been mentioned; and several Inns of Chancery, belonging respectively to these Inns of Court. The former are occupied by barristers and students, and the latter by attorneys, solicitors and their clerks. Fortescue, speaking of these Inns in his time, says that the laws of England being learned and practised in three different languages, namely, English, Norman French, and Latin, could not be so well studied in the universities where Latin was mostly in use; but were studied in a public manner and place, much more commodious and proper for the purpose, than in any university; that the situation of the place was between London and Westminster, and not in the heart of the city itself, where the great confluence and multitude of the inhabitants might disturb them in their studies, but in a private place, separate and distinct by itself in the suburbs, nearer to the courts of justice, that the students at their leisure, might daily and duly attend with the greatest ease and convenience. The Inns of Court, although they remain in the same place as in the days of Fortescue, are now in the midst of the business and bustle of the town. Fortescue says, that the students in the Inns of Chancery, of which Inns, there were ten or more in his time, were young men, who studied there the first principles of the law; and that after having made some progress there, and being more advanced in years, they were admitted into the Inns of Court. In

these greater Inns, he says a student could not well be maintained under eighty scuta, (a very large sum in those days), and if he had a servant to wait upon him, as for the most part they had, the expense was proportionably more, and that for that reason, the students were sons of persons of quality ; those of an inferior rank not being able to bear the expense of maintaining and educating their children in that way. As to the merchants, he says they seldom cared to lessen their stock in trade by being at such large yearly expenses. So that there was scarcely to be found throughout the kingdom, an eminent lawyer, who was not a gentleman by birth and fortune, and consequently, they had a greater regard for their character and honor than those who were bred in another way. There was in the Inns of Court and Inns of Chancery, a sort of academy or gymnasium, fit for persons of their station, where they learned singing and all kinds of music, dancing and such other accomplishments and diversions, as were suitable to their quality and usually practised at court. At other times, out of term, the greater part applied themselves to the study of the law. Upon festival days, and after the offices of the church were over, they employed themselves in the study of sacred and profane history. There, says our author, every thing good and virtuous was to be learned, and all vice was discouraged and banished ; so that knights, barons and the greatest nobility of the kingdom, often placed their children in those Inns of Court, not so much to make the law their study, much less to live by the profession, (having large patrimonies of their own,) as to form their manners and to preserve them from the contagion of vice.

These Inns for a long time after the days of Fortescue bore a very strong resemblance to universities. They conferred their degrees of apprentice, or barrister and sergeant at law, answering to the degrees of Bachelor and Doctor of Law conferred in the universities. There were lectures or readings which the students attended. Prayers were daily read in the chapels belonging to the Inns. Questions were daily mooted. The students constantly lodged there, and dined and supped in the halls of the Inns in vacation, as well as in term time. The Inns were impaled and the gates were closed at a certain hour in the evening, and opened at a certain hour in the morning, in like manner as at the universities. Each Inn had rules and regulations regarding the conduct of the students

much like those at the universities. And the members were accountable to the heads of their Inns for their conduct, with as much strictness as the students at Oxford or Cambridge are now.

Lord Coke says, speaking in reference to his time, "As there be in the Universities of Cambridge and Oxford divers degrees of general sophisters, bachelors, masters, doctors, of whom be chosen men for eminent and judicial places both in the Church and Ecclesiastical Courts, so in the profession of the law, there are mootmen, which are those that argue readers' cases in Houses of Chancery, both in terms and grand vacation. Of mootmen, after eight years study or thereabouts are chosen utterbarristers. Of these are chosen readers in Inns of Chancery. Of utterbarristers, after they have been of that degree twelve years at least, are chosen benchers or ancients; of which one that is of the puisne sort reads yearly in the summer vacation, and is called a single reader, and one of the ancients that had formerly read, reads in Lent vacation, and is called a double reader, and commonly it is between his first and second reading, about nine or ten years. And out of these the king makes choice of his attorney and solicitor general, his attorney of the court of wards and liveries, and attorney of the duchy, and of these readers are sergeants elected by the king, and are by the king's court called *ad statum et gradum servientis ad legem*; and out of these the king electeth one two or three as please him, to be *his* sergeants, which are called king's sergeants. Of sergeants are by the king also constituted the honorable and reverend judges and sages of the law. For the young student, which most commonly cometh from one of the universities for his entrance or beginning, were first instituted and erected eight houses of Chancery to learn there the elements of the law, that is to say, Clifford's Inn, Lyon's Inn, Clement's Inn, Barnard's Inn, Staple's Inn, Furnival's Inn, Thavie's Inn, and New Inn, and each of these houses consist of forty, or thereabouts. For the readers, utterbarristers, mootmen, and inferior students, are four famous and renowned colleges, or houses of court, called the Inner Temple, to which the first three houses of chancery appertain, Gray's Inn, to which the next two belong, Lincoln's Inn, which enjoyeth the last two but one, the Middle Temple which hath only the last. Each of the houses of Court consists of readers above twenty, of utterbarristers about thrice

so many, of young gentlemen about the number of eight or nine score, who there spend their time in study of law, and in commendable exercises fit for gentlemen. The judges of the law and sergeants being commonly above the number of twenty, are equally distinguished into two higher and more eminent houses called Sergeant's Inn. All these are not far distant from one another and altogether do make the most famous university for profession of law only that is in the world, and advanceth itself above all others, *quantum inter viberna cupressus.*"

It would seem, notwithstanding the magniloquence of Lord Coke, that the study of the law in these Inns had, even in his time, in some degree degenerated since the days of Fortescue. Two of the Inns of Chancery certainly, if no more, had become extinct, and in each of those remaining there were only about forty students, whereas, in Fortescue's time there were in each at least one hundred. And in comparing the ancient lectures, or readings, with those in his day, Lord Coke in another place says "now readings having lost their former qualities, have lost also their former authorities; for now the cases are long, obscure and intricate, full of new conceits like rather to riddles than lectures, which, when they are opened, vanish away like smoke, and the readers are like lapwings who seem to be nearer their nests when they are farthest from them." The diminution of the number of students may probably have been occasioned by the circumstance that the sons of the nobility, not particularly destined for the profession of the law, did not resort there in so great numbers as formerly for the purpose of completing their education. The Inns were still, however, even at this time, the residence of some of the sons of the nobility, and men of family and fortune; and being intended, as the order of the readers and benchers declares, "chiefly for the profession of the law, and in a second degree for the education of the sons and youth of riper years of the nobility and gentry of the realm," it is but reasonable to suppose that lighter and more attractive studies and pursuits, and "commendable exercises fit for gentlemen," as Lord Coke denominates them, often took the place of the dry and less inviting learning of the law. Sir Christopher Hatton first gained the favor of royalty by appearing in a mask made by lawyers; even Saunders excelled on the harpsichord; Lord-keeper Guilford, besides being skilled in the modern languages and painting, was

a scientific and practical musician, and composed pieces of music after he was honored with a seat on the bench ; Sir John Davis wrote a poem in lyric verse, on the antiquity and excellence of dancing ; and Lord Bacon composed an essay on the subject of masks. Many curious and amusing details are given by ancient writers of the customs and usages of these Inns in former times. They had their revels, their romantic festivals, their grand christmassings, their masquerades, their banqueting nights, their splendid pageants, and their pastimes and amusements of various kinds, in which the judges, sergeants at law and barristers often participated. "They sang, they danced, they made merry, and on their days of license their 'lords of misrule,' 'jack straws,' and 'kings of the cockneys' made their halls ring with festivity."

But the times have undergone a great change, and the course of education has changed with them. Few only of the ancient customs or ceremonies remain. Their feastings on grand occasions, their splendid pageants, their former pastimes and amusements, have long since been discontinued, and are known only to the antiquarian. Their readings, mootings, lecturings and other like exercises, have shared the same fate. Residence is no longer required, and consequently prayers are no longer daily read in the chapels ; dining in the halls in vacation and supping has ceased ; and scarcely any thing remains but what is alluded to in that part of the report of the common law commissioners which we have already quoted. But the rank and character which the profession of the law sustains in the community, has not perhaps been very materially affected by these changes. It has still enrolled among its members, some of the younger branches of the nobility, and scions of the most distinguished families in the country, although it is principally composed of the upper ranks of the middle classes, and has nevertheless many among its members who have by force of their talent and industry, struggled up from the lower classes in society. A barrister is still considered as a fit companion for the greatest nobleman in the realm, and those who have been members of the profession, are usually among the most distinguished in both Houses of Parliament and of his majesty's counsel.

In term time the benchers, barristers, and students, still continue to dine in the halls of the respective Inns of Court. They are not allowed to appear on these occasions without their

gowns. The halls are much like those in the colleges at the universities of Oxford and Cambridge. The arms of their treasurer, are painted on the windows, and portraits of their distinguished men are hung upon the walls. The barristers and students sit at the tables running along lengthwise of the hall ; and the benchers sit at an elevated cross table at the upper end of the hall. The names of those dining in the hall are taken down by the steward every day during term in a book kept for the purpose. No one who dines in the hall can leave till grace has been said after dinner. The fare of the benchers is more sumptuous than that of the barristers and students. After dinner the benchers retire to their private room to drink their wine and partake of the desert provided for them, in like manner as do the masters and fellows in the colleges at the universities. Here the candidates for admission to the degree of barrister are introduced in gowns and with bands, on the occasion of being called to the Bar. The ceremony is as follows. The customary oaths are taken, after which one of the benchers declares to the candidates, that the benchers have determined to call them to the Bar and congratulates them on the occasion, and usually drinks their health for which they return thanks and then retire. They take the same oaths again at Westminster Hall, and thereupon are admitted to practice. The number of the benchers is limited and vacancies are from time to time supplied by election made by themselves. King's counsel, however, become *virtute officii* benchers of the Inn to which they belong. In regard to the practice of dining in the halls in term time, so far as it regards students, the common law commissioners say, "We conceive that that part of the present system of all the societies, by which students in whatever part of the kingdom they may be resident, are required to dine in the common hall, a few days in the course of every term, is founded on just views and attended with beneficial effects. Amongst these may be noticed that of its making known the person of the student and exposing him, if his character be disreputable, to more easy detection by the society before the period of his application to be called to the Bar. It also gives an opportunity of attending the courts, and associating with students and other members of the profession."

The chambers in the Inns of Court, we believe, are let, either from year to year, or for three lives ; and each of the Inns of Court has a very large annual income arising from the rents of

its estates and otherwise. The income of the Inns has been estimated, but with what accuracy we know not, at sixty thousand pounds sterling. Many complaints have been made recently and since the attention of the public has been particularly called to the subject, not only that this income is not so well employed as it is imagined that it might be, but that many of the rules and regulations of these societies relative to the admission and education of students and barristers, are not such as ought to regulate the education and admission to a profession occupying a most prominent and important rank in the civil institutions of the country.

Some of these are noticed by the common law commissioners as being in their opinion objectionable. And in their report they recommend that either by act of Parliament, or by authority of his Majesty in Council, the societies be enjoined to allow, and the judges of the courts at Westminster to receive, an appeal from any act of the benchers of any of the Inns of Court rejecting an application for admission into their society ; and that it should be established by way of positive regulation that in all cases where an application is rejected, whether it relates to admission as a student, or to the call to the Bar, the party applying shall have notice in writing of the cause of rejection, — shall be allowed to clear himself from any charge of misconduct which it may involve, and for that purpose shall be at liberty to make his defence either in person or by counsel, and to produce evidence, and that a full report of the whole evidence and other proceedings before the benchers, shall in the event of an appeal, be laid before the judges. They further recommend, that it should be ordained that no general rules, or orders in future to be made by any of the societies on the subject of admission of students, or call to the Bar shall be of any force until they shall have been laid before all the judges of the superior courts at Westminster, to be assembled for this purpose, and approved and subscribed by such judges, or eight or more of them, which they remark would be a partial return to the ancient practice. They also express an opinion that the rule requiring special pleaders and conveyancers to obtain a license from the societies to practice is objectionable. They propose that the certificate of two graduated members of any of the universities, or of two respectable householders, should suffice instead of the recommendation of one bencher or two barristers, when candidates are proposed for admission to the societies ; and that in all the Inns of Courts the power of admit-

ting or rejecting an applicant for call to the Bar should in future be vested in the benchers only. With respect to the existing rules of the Inns of Court subject to these exceptions, the commissioners report that they appear to them to be free from objections.

Notwithstanding the apparently objectionable features of the rules and regulations of these Inns of Court, so far as they relate merely to the admission of students, or to the calling them to the Bar, yet such is the character of the body invested with discretion in this regard, namely, the benchers, who are men at the head of their profession, and most of them far advanced in years, and such of course has been the manner in which this discretion has been exercised, that, from the earliest times, there have been very few cases of complaint, and even in those, from the best accounts we have of them, there is hardly room for a doubt of the correctness of the decision of the benchers.

Mr. Harvey and Mr. O'Connell, on the occasion of the motions before referred to, boldly contended, in the House of Commons, that no serious evil was to be apprehended from opening wide the portals to the profession, and admitting all persons of whatsoever character or pretensions, to practice; and that public opinion would put each person on his proper footing, and deal out rewards and punishments to each practitioner according to his merits. And we have recently heard the echo of the speeches of these champions of equalization in our own legislature. But for our own part, we have much more confidence in the dictates of past experience than in the visionary, or indeed worse than visionary schemes, of these noisy declaimers, however specious they may perhaps to some at first view appear. We are not among those who believe in the absolute infallibility of public opinion. The remarks of a writer in the *Law Magazine* upon this subject are so apposite that we cannot refrain from quoting them. "Most people," says this writer, "understand the value of fearless advocacy in times of trouble, nor can they well avoid seeing the importance of learned, enlightened, high-toned, and pure-minded judges, who must all be furnished from the Bar. But few can, or will see the injurious change that would be effected in the administration of justice, and even in the most intimate relations of society, by the indiscriminate introduction of rogues and swindlers into the profession (or which comes nearly to the same thing,) by

establishing it as a principle, that bad character shall not operate as a disqualification. It is, however, an undoubted truth, that litigiousness, and chicanery have been found increasing and decreasing in all countries in exact proportion to the elevation or degradation of lawyers as a class; and that civil litigation is always at its height, where the profession has ceased to be considered an honorable one. There is another way of looking at this subject, which may level it to the apprehension of ordinary minds. The present mode of conducting the business of the courts depends altogether upon confidence. The Bar confide in one another. And the bench confide in the bar. When, for instance, the counsel state that such or such is the purport of an affidavit, or other paper, the judges act on the statement, and dispense with the regular reading of the documents. Again, mutual good opinion amongst counsel leads to admissions, waivers of strict form, and equitable arrangements which benefit the suitor, at the same time that they greatly lighten the business of the courts." So another English writer upon this subject remarks, that it had been contended that the profession of the law ought to be open to every one who chooses to enter; that no testimonial of fitness or respectability should be required, that let a man be ever so immoral, ever so covered with crime, still this should not affect his competency to be called to the Bar. "They would have the English Bar," he observes, "like Noah's Ark, full of clean beasts, and of beasts that are not clean and of every thing that creepeth upon the earth. But what," he asks, "would be the necessary consequence of this indiscriminate admission to the bar? Assuredly it would inevitably sink the profession into the lowest depths of degradation. As a body it would no longer command respect, for it would cease to be respectable. We judge of a whole by its parts. If the members are corrupt, the body is corrupt. Admit the 'unclean' and you exclude the 'clean.' They cannot co-exist in the same place. To associate them in the ark required a miracle. Their principles are so repugnant that in whatever definite proportions they may be mixed, they repel each other. No sophistry, not even the quack alchemy of Mr. O'Connell, which transmutes his patriotism into gold, can hold them together in solution, — one must precipitate. Deeply as we should deplore this degradation of the bar, much as we should lament, that a body once the ornament of the country should become its shame, yet this would be

but a small matter compared with its evil influence upon the most sacred of all institutions, the administration of justice. If we degrade the Bar, we shall look in vain for dignity, learning, and integrity upon the bench. The stability of our institutions would be shaken, all confidence in government would be destroyed. Men who have any stake in the country would no longer consider it safe. A spirit of distrust would animate every breast, preside over every council, direct every action. Despairing of justice each man's will would be his own law."

These sentiments are not peculiar to us, or to the English Bar. Professor Bellot, a learned advocate of the bar of Geneva, in a Report made May 26th, 1834, to the Representative Council, in behalf of the commissioners appointed to examine the project of a law concerning advocates, proctors and officers of the courts, advances, in somewhat different language, the same opinion. "The parties," says the learned professor, "have need of counsel, of guides, of defenders, whose duty it shall be to examine and appreciate their claims and their rights; if they find them well founded, to institute the proper form of process, to assist in obtaining and producing the proofs, to reduce to writing and develop orally the facts of the cause, and the points of law which it presents, and, judgment once rendered, to direct, if it be favorable to him, in executing it, and if it is the contrary, the recourse which the law affords to him. This task requires of him who undertakes it, a profound knowledge of the laws and of legal forms of proceeding, the art of writing with precision and clearness, the talent of speaking, independence of character, a conscientious zeal and a rectitude of heart, which will repulse bad faith, and disdain all those artifices calculated to mislead the judges and obscure the truth. In every state of society, when the practice, without limit, is left to ignorance, inexperience and bad faith, grievous consequences ensue. The laws lend their aid and prevent these dangers, by the guaranties which they exact from those who exercise this profession. So in the art of healing, the laws have regulated the studies, examinations and proofs which those who would practise must furnish and undergo. They have reserved the practice exclusively to those only who have given these guaranties. They have ranked in the number of offences, the secret and unlicensed practice of this art. The consequences of ignorance and incapacity in an advocate and proctor may differ in their

nature and degree from the same deficiencies in a physician, but they are always not less important. If, in the hands of one, our health and life may be compromised ; in the hands of the other our property, our condition in life, our honor, more dear than life, may be sacrificed. The legislature, therefore, ought to afford protection, by requiring similar guaranties from both. It is moreover, beyond the capacity and power of the majority of clients, or patients, to appreciate the merits and qualifications, either of the lawyer or the physician. The public character with which they are invested, is most frequently the cause of all their confidence and security."

The remarks of these writers are not speculative ; they are verified by history and experience. In France, at the time of the revolution, it is well known that the order of advocates and proctors was abolished, and the bar was thrown open to all who might chose to practice in the courts. The consequence was just what might have been expected. Speaking of the evils and mischiefs arising from the abolition of the office of proctor (attorney) at this time, a French writer says, "The parties, although there no longer existed any regular proceedings, finding that they could not defend themselves, were obliged to abandon their controversies in law to agents having no legal office or character, who abused their confidence with so much the more impunity, as they had nothing to fear from those laws, which at all times existed to punish the misconduct of proctors and attorneys. Mr. Emery in exposing the reasons of the law, 27 ventose, 8 year, which established again avoués, said, that in so doing they only yielded to the opinion of every body who knew anything of legal proceedings, which could not be regular without this class of professional men ; it was the only way to prevent immense abuses, and, which would surprise only those who were inexperienced in the matter, would diminish greatly the expenses of suitors. In a fit of delirium of fancied perfection, attorneys and all formal legal proceedings were abolished, because the ignorant and idle were always tributary to the industrious and learned. The attorneys did not lose their employment, but their legal character only. And having no longer any regular fees in the courts of justice, they made arbitrary exactions even before undertaking the business, much larger than they would have obtained by the regular proceedings, which had been abolished. Never was justice more dear. Much greater was

the inconvenience when the parties confided in those who had never exercised the functions of proctor or attorney; a confidence too often abused by intrigue and avidity." So the learned professor Bellot, in the name of the commissioners, whose report we have before mentioned, speaking of the abolition of the order of advocates before mentioned, and the free admission and license of all persons of every condition in life to practice in the courts, says, "The experiment was made in France and Geneva from 1795 to 1800, and was far from producing a favorable result. The bar was overrun by practitioners without instruction and without shame, free from all restraint and from all responsibility, practising cruelty and calculating upon misfortune; there never was exhibited in the same degree as in these years of sad remembrance, a spectacle more deplorable, of more crying excess of cupidity and of fraud."

So in Scotland, it seems that originally no specific qualifications were required, but the judges admitted whom they thought fit, and that in consequence of the admission of persons without fit qualifications to practice, the order of advocates fell into great disrepute and serious evils ensued. In the articles proposed by the order of advocates, relating to admission to practice, 17th of November, 1610, and approved by the court, for the correction of abuses, they, in the quaint language of the day, declare that "they lament the contempt into which their calling of advocation, which was once honorable, was brought; and amongst other causes thereof, they find the neglect of a just trial, which is requisite in the most mechanic callings, is the principal; the omission whereof has produced in a short time, an evil which is almost incurable, in such sort, that the name and estimation of an advocate has become vile, and has left the former beauty; and that not without some imputation to the honorable seat of the college of justice in which they serve."

The qualifications required in all civilized countries, from time immemorial, for the exercise of this profession, undoubtedly in consequence of having previously experienced serious evils for the want of them, furnish convincing proof of the utility and necessity of restrictions and regulations to prevent a free admission of all persons, whatever may be their condition or qualifications indiscriminately, to conduct the suits and plead the causes of others in the courts of justice. To maintain the dignity of the profession and guard the rights and

interests of the public, it was thought necessary by the Romans long before, and in the time of Justinian, to require, after a preparatory education, the period of five years to be spent by the candidate for admission to the bar, in the study of the law, under the instruction of the eminent professors of that age, in the schools at Rome, Constantinople, or Berytus. And no person was admitted to the order, and enrolled on the list of advocates in any of the *forums*, without having been found on examination to be qualified according to law for the important trust. And not only a competent knowledge of the law, but a most unblemished character was a necessary and essential qualification. All persons convicted of deceit, fraud or breach of trust, or of any offence in the Roman law, denominated infamous, which seems to have included among others, all who had been found guilty, on accusation, of calumny or prevarication, or wilful wrongs, and all dancers and declaimers on the stages, or before the public, were debarred from exercising the profession of advocate or proctor. Both proctors and advocates were forbidden to contract or bargain, pending the cause in which they were engaged, with their clients, for their rights or for any part of the matter in controversy, or make any pact or agreement with him, on pain of being forever afterwards debarred from practice. Every advocate took an oath in each cause, that he would, with all his ability and knowledge, obtain for his client what he should believe to be just and true, that he did not know the cause to be unjust or wholly desperate, or founded on false allegations, and that if in the course of the cause, he should find it to be so, he would abandon it. They were required to confine their pleadings to the exigencies of the case, and not unnecessarily to slander any one, or cavil, or be guilty of any falsity in their pleadings, and were forbidden, on pain of being struck from the list of advocates, to take extravagant fees of their clients. The greater part of these regulations relating to the profession in the time of the Romans, are in substance, incorporated into the ordinances concerning the same subject, in most of the nations of modern Europe. In Spain, the candidate for admission to the Bar as an advocate, must have obtained the degree of bachelor in the liberal arts and sciences, and must have afterwards passed four years in the study of the civil and canon law, and three years more in the office of a practising advocate, in the academies, or two years as assistant in practice in the universi-

ties ; after all which, he must undergo one or two examinations, whereupon if he is found fit, he is admitted to be enrolled on the list of advocates. The rules regulating their practice, are substantially the same of those abovementioned in the Roman law. In Tuscany, the candidate for admission to the college of advocates, after an academical education, must have obtained a degree of doctor of laws, in some of the recognised universities, and have practised four years as an assistant to some justice or advocate at Florence, and afterwards must have passed with approbation an examination by the Royal Council, after which his name may be entered on the roll of advocates. The same qualifications in respect to education, and an apprenticeship of three years with some practising advocate, and a certificate of good morals, are required for admission to this degree, in the profession at Rome. And we believe that the qualifications required in other parts of modern Italy, are not very different from those of Tuscany or Rome. In the different parts of Germany, different qualifications are required, generally a preparatory course of study in the liberal arts and sciences, and three or four years study of the law and attendance on lectures in the universities, are requisite for the exercise of the office of an advocate. After this, the candidate must undergo two or three examinations, and practise two or three years in court, as assistant to the scribe, or to the judge ; and must also, we believe, pass a certain period of time in the office of an advocate ; after all which, he may be licensed to practice by the government. We must, however, except the Rhenish provinces, where the French system, we believe, is in force. In order to become an advocate in France, it is necessary to obtain the degree of licentiate in law, which is only to be obtained by three years study, and after undergoing four examinations, and maintaining a thesis. And after taking the oath of office, a novitiate of three years must be passed, during which time constant attendance on the court is required ; and no one can plead or defend any causes until two years at least of this time has elapsed, or he has arrived at the age of twenty-two years ; and no one can be enrolled on the list of advocates until the novitiate has expired.

In Holland, before the ancient Dutch law was supplanted by the code Napoleon, no one was permitted to practise as an advocate or counsel until he had taken the degree of doctor of law in some one of the acknowledged universities, and had

been sworn in as an advocate before the court. In Scotland, on the occasion before alluded to, the faculty of advocates made a proposal to the court, which was approved of, that no one should be admitted an advocate until he had gone through a course of philosophy, and studied law in a university for two years, and should give a proof of his qualification, or should have served with an advocate of learning and experience for seven years. It was further necessary that he should obtain a recommendation from the Lord Advocate. Soon after this time a thesis was required to be written by the applicant. But a more liberal course of study than that indicated by these regulations was followed by many of their lawyers; for after acquiring the learned languages, and the other branches of education which the country then afforded, they repaired to the low countries which were famous for learned civilians, and there spent several years in the study of the law. Since that time a knowledge not only of the civil law, but of the municipal law and practice of Scotland is indispensably requisite. The applicant must now present a petition to the court, stating his wish to become an advocate, and his readiness to undergo a trial. The court remits him to the Dean of the Faculty, who again remits him to private examiners. On satisfying the examiners that he is twenty years of age complete, they examine him on the civil law. If he be found qualified upon this trial, the examiners report to the Dean and Faculty. After the lapse of a full year he is examined on the municipal law. If he acquit himself properly on this second trial, the examiners recommend him to the dean, who assigns him a title in the civil law for his public trial. A law in the title is then assigned by the dean for his lesson before the lords. On being approved he appears before the court, and takes the oath of office.

In all these countries, we believe, except Germany, (where we are told the condition of the advocate is any thing but independent and agreeable,) the advocates are formed into distinct associations or bodies, and governed by certain rules and regulations touching their practice and conduct.

Taking a general view of the laws and regulations of all these countries, relative to the profession, we see that there are some of these regulations which seem to be generally admitted to be indispensably necessary for the public interest and welfare. They are the same which the learned professor Bellot, in the name of the Commissioners, declares in his

report, to be essential, namely first, besides a liberal education, a study of the different branches of law for a certain number of years; such examinations as may be sufficient to ascertain whether the candidate is familiar with the principles of the science, and the text and reasons of the law, and an apprenticeship for a certain period with some one in practice, in order to unite the study of the theory with the practice of the law, and to acquire a familiarity with legal forms and processes, as qualifications for the bar. And secondly, an organization of the bar into an association or body, in order to regulate the practice and promote the honor and dignity of the profession.

Some complaint has recently been made, and we think not without good reason, against the system adopted by the Inns of Court in England, because the law is not taught there by professors or public teachers, and no particular course of education is prescribed or required, nor any examination necessary to entitle the candidate to be called to the bar. The society of the Inner Temple have lately established courses of lectures, and employed lecturers to read upon the different branches of the law. Whether the other Inns intend to follow the example or not, we do not know. The want of a regular system of legal education, perhaps may be one cause why the law has not been much studied in England as a science. The evils nevertheless arising from the want of a regular course of instruction, and of an examination, are not so great as without much consideration we might anticipate. A certain number of years being required to be passed in pupilage, and the student being prohibited from following any business whatsoever during this time, it only remains for him to read and qualify himself for the profession, or remain idle, or devote his time to pleasure and amusement. Whoever hopes to succeed in the profession, where there is so much competition, knows that it is an indispensable condition, that he should have a thorough knowledge of the law, and an aptness for practice, especially inasmuch as his attainments and ability will be pretty fairly estimated, by those to whom he can alone look for employment (the attorneys and solicitors) who are themselves lawyers, and not often misled or attracted by superficial attainments, and seldom fail to discover it, if the interests of their client suffer for want of skill and ability, or a competent knowledge of the law on the part of the barrister. This induces every one, who looks to

the profession for his livelihood, to qualify himself accordingly. And if there be some want of system in the legal education of an English barrister, it must be remembered that there is some want of system in the English law. And although the law may there be studied rather with a view to the particular branch of it which the candidate for the bar thinks will be useful to him, in the future line of practice which he intends to follow, than to comprehend the whole body of it, and reduce it, as far as possible, to general principles, yet, on the whole, he generally is tolerably well qualified for the duties which he undertakes to perform. And indeed many of the English barristers, besides being distinguished for a most profound knowledge of the laws of their country, are distinguished also for their high attainments in literature and the liberal arts and sciences. We have no doubt, nevertheless, that it would be much better for the profession and for the law itself, if it were taught in these Inns by learned professors, in the same manner as the liberal arts and sciences are taught in the universities.

It has been thought by some, who, we think, have not maturely considered the subject, that it would be better to dispense with the condition, which requires a certain time to be passed in pupillage, and to substitute in lieu of it a rigid examination. There are some, it is true, who, by their industry and capacity, will learn more in one year than others will in three. And it may at first view seem unreasonable and unjust, to put the indolent and the stupid, on a footing with the industrious and the talented. But universal practice in the universities and elsewhere has decided, and we think with great reason, that the length of time spent is the best general and practical test of proficiency in any art or science. It is very difficult, by such short examination as is usually made, to ascertain the qualifications of the candidate. And these examinations most commonly have been found to dwindle down into a mere unmeaning form or ceremony. And moreover, if no particular length of time were required, and admission depended wholly upon approval on examination, a wide door would be opened to the most mischievous and odious partiality and favoritism. It is undoubtedly for these reasons that a certain time has been, in all the countries before mentioned, required to be spent in the study of the law, before admission to practice. And that length of time, both in England and in the various states in the United States, whatever may be the industry or talents of the student, instead of being too long, is too short.

The profession in England derive, we think, far greater advantage from their system of administering justice than they do, in many other countries, from their system of professional education. For in England the Parliament, one branch of which constitutes the highest court of appeal in the realm, the Courts of Common Law, the Courts of Equity, Bankruptcy, and Insolvency, the Courts of Admiralty, and Ecclesiastical Courts, the Court of Colonial Appeals, and in short all the courts of any importance, excepting the assizes held on the different circuits for the trial of causes at *nisi prius*, and the Quarter Sessions, are held in town. Here alone all the barristers transact their professional business, excepting that which is performed in court on the circuits. Here all the judges and barristers, and many attorneys, solicitors and proctors have their principal place of residence, going into the country only in the vacations, or during the assizes there. For the convenience of transacting that part of the professional business of persons in the country, which belongs to attorneys and solicitors to transact, many, indeed, of this class of the profession are dispersed over the country ; but they always have their agents in town, being also attorneys or solicitors, with whom they correspond, and who transact all such business as must necessarily be done in town.

This concentration of the members of the Bar in the metropolis, cannot but be attended with the most beneficial results. It affords them a better opportunity than they could otherwise have, of knowing each other both in public and in private life ; and of appreciating the merits or demerits of each other, and of every candidate for professional honors or distinction. It enables them to meet frequently together, which among other happy effects tends to generate kind feelings and courteous conduct towards each other. It gives life and vigor to organized associations, for the regulation of their conduct, as members of the profession. It furnishes an opportunity of watching, exercising a censorship over, and controlling with complete effect, the professional practice and conduct of the whole Bar. It creates an *esprit du corps*, which advances with becoming zeal the best interests, at the same time that it promotes the purity and dignity of the profession. It occasions an honorable competition and emulation among the Bar. And among many other manifest advantages with which it is attended, it renders the division of professional labor more convenient among the barristers

themselves, and between them and solicitors and attorneys, and thereby allows the barrister more time for study, elevates him in rank, makes him more independent, and furnishes him at all times a sufficient number of competent judges of his merit, if he aspires to be known and to succeed by his talents, skill and professional attainments, without courting the favor, humoring the whims and caprices, or depending upon the opinion of the public in general, or the applause of the populace, for his advancement. We certainly know that many eminent men of great ability and learning have, by their merits, made their way to the head of their profession in England, who might, probably, elsewhere, with all those merits, have struggled in obscurity in the lowest rank with scarcely enough to procure their daily bread. And all the laws which can be made, respecting education or qualifications for any profession, will not secure great professional attainments, if they be, in the estimation of those, on whom the professional man must depend for his living, of no value after they have been acquired.

We are much inclined to think that the lofty independence, unimpeachable integrity, and high rank and character of the English Bar, depends much on this classification of the profession. The more humble offices discharged by the attorneys and solicitors, and which must necessarily be discharged by some legal functionary, are quite apt to beget servility and a feeling of dependence, and to put at hazard oftentimes the honor and integrity, as well as the dignity, of the profession. Being the only persons, who, in administering the law, come in immediate contact with those on whom it is made to operate, excepting the bailiffs and officers executing the process, they are necessarily exposed to popular odium ; and relying immediately on the people for patronage and support, they are also necessarily subjected to the dominion of popular opinion. Cringing, sycophancy and obsequiousness cannot be supposed to be necessary, but a great desire to conciliate favor, and a dread of giving offence, must often place them under great restraint. The situation of the barrister is quite different. He does not necessarily come in contact with the parties litigant. Often, perhaps, he may not personally know them. His mind is not narrowed, nor are his habits debased by his business. He is not obliged to submit to any employment which may derogate from his dignity, nor is he liable to any influences unfavorable to freedom of action. It is true he is dependent on the

attorneys for employment. But this is quite a different sort of dependence from that before mentioned. It is a dependence on those who can appreciate his talents and attainments, and who are interested in employing him who excels. He takes consequently a rank in society, which, in the eyes of the community, adds weight to what he says. As he is employed only for the occasion, and has no intercourse with his clients, he imbibes none of the client's feelings of animosity or revenge. And the Bar, therefore, generally presents a spectacle, not of pitiful wrangling, but of friends disputing grave matters of fact or of law. There is the same division of labor and classification of the profession, we believe, in most of the countries of modern Europe ; and it has been so, ever since, and even long before, the time of Justinian. Austria, Prussia, Poland, the Republic and Canton of Geneva, and perhaps some other of the Cantons in Switzerland form the only exceptions of which we happen to have any knowledge.

But we have to remark, however, that the offices of advocate and proctor have recently been united in Geneva, by a law adopted by the representative council, on the recommendation of the commissioners before referred to, who assign reasons for the change, which we have not time or room to consider. In support of some of their assertions, they refer to the countries before named, and to the United States. They admit that, in large cities like London and Paris, there may conveniently be a division of labor, although they seem to think it would be better for the public even there to unite the two classes. And Lord Brougham in the House of Commons threw out a suggestion to the same effect. The opinion entertained, we believe, generally, in England upon this subject, is pretty well expressed in an article in the London Magazine, which contains an allusion to Lord Brougham's suggestion.

“ One branch of the profession cannot be struck at in this manner, without the other being hurt by the blow, the real effect of the proposal being to melt the two orders into one. In Poland, for instance, where advocates have been suppressed, the advocate has his office and clerks exactly like an English attorney, and the result would be everywhere the same. Instead of merely advising in cases of difficulty, — *ubi dignus vindice nodus*, — or going into court to speak from a brief, — the barrister would have to manage all the mechanism of a suit, and get up the whole case for himself. With the nature

of his calling, his arguments and his rank in society would sink, not merely to that of a solicitor, but for obvious causes, considerably below it. A Bar, regulated by a high standard of honor, not merely discharges its own peculiar duties and compels the judge to discharge his with scrupulous integrity, but gives a tone to the profession, and constitutes the best conceivable check on the malversation of subordinates; since the immediate agent with whom the party communicates, feels the hopelessness of asking a member of such a Bar, to conspire with him, and yet cannot venture, — indeed would not be allowed, — to take the whole responsibility on himself."

In France the law has declared the offices of *avocat* and *avoué* to be in general, and with certain exceptions, incompatible. A different education and qualifications are required for the *avoué*. He must be more than twenty-five years of age, and have obtained a certificate of capacity after having spent a certain length of time in one of the faculties of law; and to practise in a *Cour Royale*, must have served a clerkship of five years with an *avoué*. The principal reasons assigned for uniting the two offices, in the report to the Representative Council of Geneva, are certain supposed evils and inconveniences to the client, arising from this division of professional labors; namely, the inconvenience, loss of time, and additional expense, of employing and instructing two persons in regard to different parts of the case intimately connected, the want of the best advice in the first instance, the want of system and unity of views in conducting the cause, and the want of an undivided responsibility of those employed. The commissioners are not very fortunate however, in referring to Austria and Poland as examples of the effects of such a union of professional offices. In those countries, we believe, the profession hold a lower rank in society than in any other part of Europe. But there may be reasons operating in Austria, Prussia, Poland and Switzerland, as there certainly are in most parts of the United States, against such a classification of the profession, which do not exist elsewhere. An attempt has been made in New York, but the separation is far from being complete. It is more a matter of form than of substance. The counsellor communicates directly with the client, credits and perhaps disputes with him, about his fees; frequently has his office in the same chamber with the attorney; and counsels and aids him in business, with some understanding or arrange-

ment, tacit or express, in relation to the profits. Indeed, our habits of business in this country are not accommodated to an entire separation of the two offices. At the same time it can hardly admit of a doubt that, wherever the institutions and particular circumstances of any country have been such as to admit of a complete separation of the office of the advocate from that of the proctor or attorney, the advocates as a class, other things being equal, have been thereby elevated in character, and rendered more independent, and have held a higher rank in society.

The reason assigned by the Inns of Court for requiring that an attorney or solicitor shall have ceased to practice a certain number of years before being called to the Bar, as Sir James Scarlett (now Lord Abinger) declared in the House of Commons, is, that otherwise the profession of an attorney would be made a stepping-stone to obtaining success at the Bar through the medium of connexions, formed in a manner which could not fail to be in the highest degree injurious to the character of the Bar.

The English barrister attaches great importance to the usage which has arisen from necessity, of receiving his fees in advance. He can maintain no action for them. And if he could, he would think it a great indignity to be compelled to try the question upon a *quantum meruit* before a jury, whether he were or not entitled to one or two hundred guineas, more or less, for a retainer in an action at the assizes, which happened not to be tried. In this respect, the practice in England agrees with that of France and Spain.

The high character of the English Bar is the best security for the due administration of English laws. For the judges, who are the great protectors of the rights, immunities and privileges of the subject, are always selected from the Bar. And although political reasons may have weight in the minds of those who procure the appointments, it rarely can happen that incompetent men are elevated to the bench. And if any such person should by chance be appointed, and be so ignorant of himself as to be willing to accept the appointment, such is the character of the Bar that he could not long hold a seat there with satisfaction to the profession, or to himself. The examples of Lords Erskine and Brougham have shown, that even the greatest talents, and learning, and even popularity, will not satisfy a learned profession, when the requisite qualifications

for office are wanting. This usage of selecting the judges from the Bar, is much preferable to that which is adopted in France, Italy, Germany, and many parts of Europe, where they are taken immediately from the universities, or law faculties, without the benefit of experience.

It is an excellent feature in the system of administering the laws in England that the judges are placed, as far as possible, above all improper influences. They are clothed with a dignity that awes and forbids approach. At home, they are so much occupied in court, and at their chambers in Sergeant's Inn, that they have but little time to spend in social intercourse. At the assizes, as well as at home, they have but little intercourse with the Bar, and at all times, except in the social circle, are inaccessible to the people. They usually enter the buildings, where the courts are holden, by a private door which leads to their private room, where none but themselves and their friends, by invitation, are allowed to enter. Here they put on their robes, bands and wigs, and enter the court, through a private door which leads to the bench, from whence they retire to this room at pleasure to take refreshment, or to disrobe and leave the court. In court the demeanor of the bench towards the Bar and of the Bar towards the bench is always courteous. Indeed, among those who have had the education of gentlemen, it can hardly be expected to be otherwise.

We did intend to have made some remarks respecting the state of the profession in our own country, but have only room to express our regret, that men like Mr. Daniel Whittle Harvey and his friends in England, should have found any congenial spirits among our countrymen ready to re-echo their sentiments, or willing to slander and vilify, and attempt to lower in the estimation of the public, a class of men on whom at all times the due administration of the laws, and the rights and liberties of the people have in a great degree depended ; a class of men among whom, in all countries and in all ages, have been found the most bold, uncompromising, strenuous, and distinguished friends of freedom. A class of men to whom the people of England are indebted for their Bill of Rights and the United States for their Independence, and their republican constitutions of government.